

PAUL AND SANDRA HARVEY

IBLA 89-398

Decided March 19, 1991

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims N MC 189210-N MC 189214 abandoned and void.

Reversed.

1. Federal Land Policy and Management Act of 1976--Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

As a general rule, where BLM's records do not contain evidence that one of the two documents required to be filed by sec. 314 of FLPMA has been filed for each unpatented mining claim within the prescribed filing period, the claims will be properly declared abandoned and void. However, where a claimant submits a certified mail receipt proving that a document was in fact received by the proper BLM office within the prescribed time period, and where there is no evidence that the claimant filed any other document with BLM on that date, the presumption of non-filing is rebutted. Where an appellant alleges that he timely mailed the required documents to the correct BLM office and supplies the Board with a copy of a certified mail receipt indicating that an agent of the "US Dept. of the Interior" received documents from him on Dec. 15, 1986, and where BLM is unable to certify that this card does not indicate that it received the documents as alleged by appellant, BLM's decision declaring the claims abandoned and void for failure to make timely filing will be reversed.

APPEARANCES: Paul Harvey, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Paul Harvey (appellant) appeals from an April 13, 1989, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring unpatented mining claims N MC 189210-N MC 189214 abandoned and void for failure to file evidence of assessment work performed thereon or notice of intention to hold the claims with BLM as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Section 314 of FLPMA, 43 U.S.C. § 1744 (1988), and implementing regulations at 43 CFR 3833.2-1, require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office before December 31 of each year. Failure to file the required documentation within the prescribed time period conclusively constitutes an abandonment of the claim. 43 U.S.C. § 1744(c) (1982); United States v. Locke, 471 U.S. 84 (1985). Filing or recording the required documents with the county or local recording district does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985). As Congress mandated that failure to file the proper documents within the prescribed time limits will, in and of itself, cause the claim to be lost, this Board has no authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from statutory consequences. United States v. Locke, *supra*; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

BLM's decision declared these claims abandoned and void on account of the asserted failure to file the documentation required by FLPMA for calendar year 1986. ^{1/} Failure to file in a calendar year renders the claims void; filing of documents in subsequent years does not revalidate the claims. Thus, the continued validity of appellant's claims hinges on whether he timely filed his FLPMA documents for calendar year 1986.

By order dated February 14, 1991, we noted that there was an uncertainty concerning whether the 1986 filing was in fact made timely:

BLM's records for these claims contain no documentation marked as received on or before the deadline for filing FLPMA documents for calendar year 1986. In his statement of reasons for appeal (SOR), appellant asserts that he in fact timely filed the required documentation with BLM and has submitted his "proof of labor filed with the Clark County recorders office for that year, along with my receipt of certified mail [(Item No. P 519 574 968)] showing that I actually did mail something of importance to me, to your office that year." The certified return receipt card in question indicates that the article it accompanied was addressed to "US Dept of the Interior." It bears

^{1/} We note that appellant misunderstood BLM's decision to hold that no FLPMA recordation was on file for calendar years 1986, 1987, and 1988.

The decision is a form letter and relies on an attached list to identify the claims being declared abandoned and void. This list, which appears to be computer generated, is entitled "MISSING ASSESSMENT LIST BY SERIAL NUMBER." It indicates that the "LAST ASSMT." for claims N MC 189210 through and including N MC 189214 was 1985. In fact, the casefile contains copies of affidavits of annual assessment work for the claims that were timely filed with BLM for calendar years 1987 and 1988. Thus, the only question here is whether appellant timely filed documentation required by FLPMA for calendar year 1986.

an illegible signature denoting receipt by the addressee or its agent. The date of delivery is indicated as "Dec 15 1986."

As a general rule, where BLM's records do not contain evidence that one of the two documents has been filed within the prescribed filing period, the claims will be properly declared abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, supra. However, where a claimant submits a certified mail receipt proving that a document was in fact received by the proper BLM office within the prescribed time period, and where there is no evidence that the claimant filed any other document with BLM on that date, the presumption of non-filing is rebutted. Sidney Green, 109 IBLA 19 (1989); Richard A. Willers, 101 IBLA 106 (1988); Elizabeth D. Anne, 66 IBLA 126 (1982).

Appellant has supplied the Board with a copy of a certified mail receipt indicating that an agent of the "US Dept. of the Interior" received documents from him on December 15, 1986. This description, although obviously general, could include the Nevada State Office, the "proper BLM office" for making the FLPMA filing. Thus, the return receipt card could denote that a document was filed in that office on December 15, 1986. If so, it would be up to BLM to show that the claimant filed another document on that date. Sidney Green, supra.

In these circumstances, we cannot affirm BLM's declaration of appellant's mining claims abandoned and void absent verification by the Nevada State Office that the signature written on appellant's certified mail receipt is not that of a BLM employee working in that office in December 1986. Accordingly, we hereby order BLM to examine the signature provided on appellant's green card with attention to whether such signature is recognizable as that of an employee working there in December 1986 and, within 30 days of receipt of this Order, to indicate whether the signature indicates that the Nevada State Office received a mailing from Paul Harvey on December 15, 1986. If so, BLM may wish to demonstrate that other documentation was received from him at that time.

On March 1, 1991, BLM responded as follows:

In answer to IBLA Order to report on identity of signatory on appellant's certified mail receipt, the Nevada State Office had a mail service contract with Aero Speed Delivery Service for mail pickup and delivery in FY 1987. Contract records are only kept for three years, so we are unable to verify the signature of the authorized signing agent on the appellant's certified mail receipt.

We have no evidence that we did not receive a mailing from Paul Harvey on December [15], 1986. 2/

Appellant alleges that the return receipt card he has filed demonstrates that the required documents were timely filed in the proper BLM office. BLM is unable to certify that this return receipt card does not indicate that the required documents were filed in its office on December 15, 1986. For the reasons set out in our order, we are unable to affirm its decision. As BLM further states that it has no evidence that it did not receive a mailing from appellant on December 15, 1986, we perceive no reason to remand the matter to BLM for further consideration. In these circumstances, BLM's decision declaring the claims abandoned and void is properly reversed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

David L. Hughes
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

2/ BLM's memorandum states "December 16, 1986," but the return receipt card shows delivery on Dec. 15, 1986.